

	<p>Audit Committee 20 March 2013</p> <p>Report from the Deputy Director of Finance and Corporate Services</p>
<p>For Action Wards Affected: ALL</p>	
<p>Anti-Fraud and Bribery Policy 2013</p>	

1. Summary

- 1.1. This report seeks approval for the council's new Anti-Fraud and Bribery Policy and for the roll out of an e-learning package developed for the National Fraud Authority by Deloitte.

2. Recommendations

- 2.1. The Audit Committee approve the draft Anti-Fraud and Bribery Policy and the roll out of the e-learning package.

3. Background

- 3.1. The council's existing Anti-Fraud Framework ⁽¹⁾ was published in January 2008 and disseminated to staff in the early part of that year, together with relevant fraud awareness training. The framework is posted on the internet and is referenced within the code of conduct and disciplinary code. Probity and integrity have been a feature of the Chief Executive's induction programme. However, it is considered that knowledge and awareness of the policy has become dissipated with structural and staffing changes and it is good practice to reinforce the anti-fraud message amongst staff on a regular basis. In addition, there have been a number of significant developments since 2008 which necessitate the implementation of a new policy.
- 3.2. In 2012 the National Fraud Authority produced an e-learning tool for local authorities to use in disseminating anti-fraud awareness. This tool is free and was developed in conjunction with local authorities. It is proposed that the council utilise this resource in conjunction with face to face presentations to be delivered by the Audit and Investigation team.
- 3.3. This report seeks approval for the anti-fraud and bribery policy, attached at appendix 1 and for the roll out of the e-learning package developed by the National Fraud Authority.

4. Introduction

- 4.1. The council has maintained a keen focus on anti-fraud since the early 1990's, with strong support from Members, the Corporate Management Team and Service Area Directors. A robust line has been taken against fraud and financial irregularity and this has resulted in a much improved public image of the council, from a position where it was known as "Barmy Brent" or the London Borough of "Bent", to one where it is seen as taking probity seriously.
- 4.2. In 1994 the council set up a dedicated anti-fraud resource, the Special Investigations Unit (SIU), to counter a growing number of complex and sensitive internal enquiries and to address the government's requirements in relation to housing benefit fraud. Fraud investigators within the housing benefit department were co-located with internal audit investigators to establish the first corporate fraud team in London and, possibly, the country. In 1996, the tenancy fraud investigator based in housing was transferred into this team and the full benefits of co-location, intelligence sharing, pooled resource, single line management and reporting began to be realised.
- 4.3. In 2000 this unit remerged with the existing compliance audit team to create the Audit and Investigations Unit. The investigation element of this combined team works with managers, governing bodies and head teachers to deal with fraud and financial irregularity across all of the council's services and schools.
- 4.4. In 2012 the National Fraud Authority estimated that some £73 billion is lost to fraud across all sectors within the UK with just over £20 billion being attributed to the public sector. Of this, some £2.2 billion is estimated to be lost by local government. This figure excludes £300 million of housing benefit fraud which, although currently administered by the council, will shortly form part of the government's Universal Credit system of welfare support.
- 4.5. The Audit Commission reported £179 million of detected fraud in local government in 2011/12. Local authorities, whilst being praised for their approach to anti-fraud, clearly need to do more to bring down the level of estimated losses and increase detection to reduce the gap. Furthermore, the recovery of fraud losses is relatively low and, hence, the financial damage done by fraudsters to local government finance and the community is immense.
- 4.6. Losses at an individual local authority level have not been estimated. However, it is safe to assume that Brent is no different to any other large local authority and is equally susceptible to the full range of fraud affecting local government. Indeed the council has been more proactive than most in identifying and dealing with both internal and external fraud.
- 4.7. Since the publication of the council's last anti-fraud framework in 2008 there have been a number of significant developments in the national strategy to counter-fraud. Following the government's Fraud Review⁽²⁾, the National Fraud Authority was established to oversee and develop a UK counter fraud strategy. The government has also established a Fighting Fraud Together task force which has produced a national, cross sector, fraud reduction plan, "Fighting Fraud Together"⁽³⁾ and within this, a strategy for tackling fraud within local government, "[Fighting Fraud Locally](#)"⁽⁴⁾. The Fighting Fraud Locally strategy was developed by local government practitioners

and, whilst there is no requirement to adopt its principles, given the council contributed significantly to the document it would seem sensible to follow the general tenets of the document. The strategy proposes three themes, Acknowledge, Prevent and Pursue (APP). The council's existing anti-fraud themes of prevention, detection, investigation and remedy can be easily assimilated into the APP banner and it would seem sensible to align the council's strategy with that of the national local government strategy. Hence, the new anti-fraud policy has been drafted to follow the APP themes.

- 4.8. In addition to this renewed government focus on fraud, there has been a significant change to corruption legislation. The historic prevention of corruption acts of the early 1900s have been replaced by a single Bribery Act in 2010. As well as covering the usual offences of paying and receiving bribes, the new act introduced a corporate offence which is brought against a corporate body as a commercial organisation if any of its employees pays or offers a bribe and the organisation had insufficient procedures to prevent bribery. Whilst it is considered unlikely that any of the council's employees would pay a bribe in order to secure an advantage for the council or service unit (primarily because the council does not normally bid to supply goods or services) it is important to reflect the new requirements within the anti-fraud policy. Therefore, the new policy includes a specific section on Bribery.
- 4.9. New external fraud risks have also emerged with the further roll out of personal budgets in social care, the introduction of a localised council tax reduction scheme and the transfer of the social fund from the Department for Work and Pensions to local government. In addition, the proposed Single Fraud Investigation Service (SFIS) to investigate all welfare benefit fraud all have implications for the council's own anti-fraud processes. The new policy covers the approach to these new risks.
- 4.10. Furthermore, local government is facing the toughest funding settlement for decades. The council needs to find savings of £100m over four years to 2014 to balance its budget and is likely to face further cuts up to 2018. Such cuts inevitably fall heavily upon staff and particularly management posts, posing a threat to traditional controls to prevent and detect fraud, such as supervision and separation of responsibilities. Coupled with an economic recession, which carries its own fraud risks, significant welfare reform and greater commissioning of local authority services, the risk of fraud has never been higher. The new policy reinforces the need for managers to remain alert to the possibility of fraud within their areas of responsibility.
- 4.11. Finally, the government's proposals to create a single fraud investigation service (SFIS) combining investigators from local government, the Department for Work and Pensions (DWP) and HMRC to investigate Universal Credit have the potential to derail the anti-fraud effort within individual authorities, making them less resilient to fraud.
- 4.12. Therefore, the council needs a clear and robust policy on fraud which seeks to maximise the resources available to those in genuine need. An explanation of the policy design and structure is set out in the detail section below.
- 4.13. As part of the Fighting Fraud Locally strategy the National Fraud Authority produced an e-learning package which can be delivered via a web browser. This package has been reviewed by the Head of Audit and Investigations and is considered suitable for

staff.

- 4.14. The draft policy has been circulated to CMT members and the Head of Audit and Investigation has attended a number of DMT's to discuss the content and receive feedback from service heads. This feedback has already been incorporated into the attached draft.

5. Detail

Executive Summary

- 5.1. Sets out the critical points within the document

Letter and Preamble

- 5.2. The letter introducing the policy and the preamble are designed to remind staff of the significance of fraud, how it affects the council's services and the wider community, their responsibilities and to demonstrate commitment to the policy at the highest level of the organisation across all political groups.

Principles of Public Life

- 5.3. This is a new addition to the document and sets out the principles of public life as a reminder to staff and members of the overarching ethical framework.

Part 2 - Anti-Fraud Policy, Anti-Fraud Culture

- 5.4. The anti-fraud policy section has a number of sub-sections. It sets out the council's commitment to the eradication of fraud, corruption and misappropriation and to the promotion of high standards of integrity. It also recognises the council's fiduciary duty to protect funds. The strategy sets out the themes of Acknowledge, Prevent and Pursue to mirror those set out in the national local government strategy, "Fighting Fraud Locally"⁽⁴⁾.
- 5.5. The policy has a section on the anti-fraud culture which sets out the national context in terms of estimated losses and identified fraud together with the council's internal governance arrangements. It places a particular onus on the leadership to set a good example and, including their personal conduct outside the workplace. This makes a particular reference to the submission of misleading documents for official purposes. It is intended to deter the submission of false information to any public body.
- 5.6. The diagram on page 9 is intended to demonstrate how the three APP themes fit within an overall anti-fraud culture and to set out some of the delivery mechanisms for each theme. The following table then sets out, under each theme, how the delivery mechanisms will be addressed for each fraud threat.

Anti-Fraud Policy, Acknowledge

- 5.7. The Acknowledge sections concerning members, staff and contractors are relatively self explanatory. In relation to the public, due to the diverse nature of services provided, specific mention is made of housing benefit, social housing and the new

threats which are emerging.

- 5.8. Due to the scale of expenditure and loss, housing benefit fraud has received significant attention from central government. Local authorities, who administer housing benefit on behalf of the DWP are expected to maintain a secure benefit payment system and deploy adequate resources to investigate fraudulent claims. Until 2006 various financial incentive regimes existed to encourage the identification and prosecution of false claims. Currently, there is a potentially perverse subsidy scheme which can deter the identification of fraudulent claims through a 60% reduction in the subsidy available for fraud and error. This means that for every £1,000 of benefit paid out, which would normally attract full subsidy from the DWP, if identified as fraudulent the council loses £600 in subsidy. It may, however, keep all of the recovered overpayment and, hence, potentially can make a “profit” £400 for every £1,000 identified, if it is able to recover the full amount. Due to the difficulties in tracking recovery over the many years it takes to recover individual overpayments, it is not possible to determine whether identifying fraudulent cases is financially beneficial to the council. However, the Audit and Investigation team has, in recent years, been concentrating its resources on high value, serious fraud where there are better prospect of recovery through prosecution and the use of confiscation orders under the Proceeds of Crime Act 2002. The council has maintained a high profile in dealing with HB fraud with numerous press releases and generally receives positive media coverage for its efforts.
- 5.9. However, this is unlikely to continue over the longer term with the introduction of Universal Credit and the absence of local government as a provider of national benefit delivery. In 2010, the government announced its intention to establish a Single Fraud Investigation Service (SFIS) which would bring together investigators from local government, the DWP and HMRC to investigate all welfare fraud. This was closely tied to the implementation of Universal Credit. The initial announcement was made with no consultation with local government and has been the subject of significant debate within the representative groups. There have been various announcements made by the DWP in the intervening period and a number of u-turns. Recent plans included the establishment of SFIS from April 2013 with all investigators within local government working to a single DWP national policy and procedure on fraud whilst remaining employed and managed by their local authority. This was recently revoked and there are no plans to bring this in, other than in four pilot authorities, until April 2014. The DWP have confirmed that SFIS will not investigate council tax support. Thus creating a situation where, although the desire is for a single service to investigate all welfare fraud, separate investigators will be required for council tax support. In summary, housing benefit fraud remains a council responsibility and it will continue to be investigated alongside council tax benefit and council tax support from April 2013. This element of the Anti-Fraud policy will need to be reviewed once Universal Credit has been implemented or SFIS becomes a reality, whichever is the sooner.
- 5.10. Over recent years the Audit Commission and government have focused attention on the issue of unlawful sub-letting and other social housing fraud. In their “Protecting the Public Purse”⁽⁵⁾ publication of 2009 the Audit Commission identified that council’s were not doing enough to tackle tenancy fraud which they estimated was resulting in a reduction of some 50,000 properties being available for social housing. This was

raised in the three subsequent annual reports and in the latest “Protecting the Public Purse 2012”⁽⁶⁾ the commission argue that tenancy fraud is the single largest category of loss to local government and estimate the level of fraud to be between 4% and 6%. They have revised their national estimate of lost properties to 98,000. If the estimates were accurate, the figure for Brent would be in the region of 450 properties.

- 5.11. The Commission’s findings were supported, to a degree, by the government providing additional funding to all London local authorities in 2010, 2011 and 2012. This funding was part of the Preventing Homelessness grant and therefore not ring-fenced to fraud. DCLG provided amounts of £50,000, £100,000 and £100,000 in each year respectively and A&I have utilised this funding to provide additional services to Registered Housing Providers and to increase resources by two investigator posts. It is unclear whether or not this funding will continue in 2013/14. A&I have requested additional funding from Regeneration and Major Projects (RMP) to support this work on the basis that it enables the release of unlawfully sub-let housing stock for the use of genuine applicants, resulting in significant savings to the temporary accommodation budget. A&I are also in the process of drafting letters to request meetings with RSL to see if they are prepared to part fund the resource.
- 5.12. The pressure on housing is immense within the borough and each tenancy lost to a false application or a sub-let, means one extra family in bed and breakfast or temporary accommodation. Audit and Investigations recovered 37 properties in 2011/12 and are likely to exceed this in 2012/13 by some 20 properties. It is important for the council to maintain a focus on this type of fraud in order to help manage the temporary accommodation budget.
- 5.13. In addition to the significant housing benefit and tenancy threats, new areas are emerging as key risks for the council. These include council tax support (replacing council tax benefit from April 2013), business rates, council tax discounts such as single person and student and social fund payments (transferring from the DWP). It is also likely that the increasing use of direct payments within social care will represent a threat.

Anti-Fraud Policy, Prevent

- 5.14. The prevent section sets out the various systems and process which are in place to detect and deter fraud.

Anti-Fraud Policy, Pursue

- 5.15. This section sets out the remit of the Audit and Investigation team in relation to fraud and the approach the council will take when fraud is identified. It is intended to establish a robust approach to dealing with fraud and includes a section on contractors, requiring some terms and conditions concerning fraud to be written into contractual arrangements.
- 5.16. The section makes reference to a sanction policy which is set out in the following section.

Part 3 – Sanction Policy

- 5.17. This section sets out the council's policy in relation to various sanctions, primarily the use of prosecution. It establishes the council's legal service as the primary prosecutor and gives scope to refer matters to the Crown Prosecution Service (CPS) via the police or directly.
- 5.18. The Director of Legal and Procurement is identified as the officer who will decide whether or not to institute criminal proceedings on behalf of the council following a referral from the Head of Audit and Investigation. The considerations mirror those set out in the Code for Crown Prosecutors, 2013.
- 5.19. In relation to staff the policy provides for "triple track" sanctions of discipline, civil recovery and prosecution where appropriate.
- 5.20. The policy sets out the additional statutory sanction options for housing benefit fraud and covers the potential to prosecute tenancy and other external fraud. It also sets out the council's intention to use the Proceeds of Crime Act 2002 to recover lost amounts and additional funds through the incentivisation scheme.

Part 4 – Bribery Policy

- 5.21. This is a new section within the framework and is designed to address the requirements of the Bribery Act 2010.
- 5.22. The Bribery Act came into force on 1st July 2011 and replaces the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916, collectively known as the Prevention of Corruption Acts 1889-1916.
- 5.23. In essence, as far as local authority employees or members are concerned, bribery is the offering, giving or accepting of a financial or other advantage, by an individual in order to influence the performance of a function. This might, for example, include the award of a contract, granting of planning permissions, licences or the inappropriate provision of data.
- 5.24. Other offences introduced by the act, include bribery of a foreign public official and bribery by a corporate body. Neither of these are likely to apply to the council.
- 5.25. The Act creates an offence under section 7 regarding commercial organisations who fail to prevent persons associated with them from bribing another person on their behalf. Commercial organisations include a corporate body and therefore a Local Authority is within this definition. This would only apply if an "associated person" paid a bribe (not received one) to gain an advantage for the organisation and is, therefore, considered unlikely. An associated person would definitely be an employee or member and could be a contractor. An offence may be committed if the organisation cannot show it has adequate anti-bribery policies and procedures. The Secretary of State for the Ministry of Justice published guidance in 2011 on adequate procedures although these are high level. ⁽⁷⁾

- 5.26. An organisation that can prove it has adequate procedures in place to prevent persons associated with it from bribing will have a defence to the section 7 offence. The guidance from the Ministry of Justice includes ensuring the organisation: has proportionate policy and procedures; top level commitment; conducts a bribery risk assessment; due diligence on posts which may present a risk; communicates to employees including providing training and monitors and reviews its policies and procedures designed to prevent bribery by persons associated with it.

6. Financial Implications

- 6.1. None

7. Legal Implications

- 7.1. The Bribery Act 2010 seeks to provide a revised framework to combat bribery in the public or private sectors and removes the need to prove that acts were done corruptly or dishonestly. The Bribery Act 2010 replaces the previous bribery offences in the legislation which was known as the Prevention of Corruption Acts 1889-1916.
- 7.2. The new offences in the Bribery Act 2010 include active bribery (i.e. giving, promising or offering a bribe) in section 1, passive bribery (i.e. accepting, asking for or agreeing to receive a bribe) in section 2 and bribery of foreign public officials in section 6. The Act provides a maximum penalty of 10 years' imprisonment or an unlimited fine for all the offences on individuals and an unlimited fine only for commercial organisations.
- 7.3. Section 7 of the Bribery Act 2010 creates a new offence of "failure of a commercial organisation to prevent bribery". This section states that a commercial organisation will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. The commercial organisation will have a full defence if it can show that despite a particular case of bribery, it nevertheless had adequate procedures in place to prevent persons associated with it from bribing. The burden of proof will be on the commercial organisation on the balance of probabilities to show that it has proper compliance procedures in place. Local authorities come within the description of "commercial organisation".
- 7.4. Section 14 of the Bribery Act 2010 provides that senior officers of a body corporate may be prosecuted if an offence is proved to have been committed by a corporate body with their consent or connivance.
- 7.5. Statutory Guidance has been provided by the Ministry of Justice under section 9 of the Bribery Act 2010 regarding procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing. The Guidance states that the Government considers that procedures put in place by commercial organisations wishing to prevent bribery being committed on their behalf should be informed by six principles – namely: (1) proportionate procedures; (2) top-level commitment; (3) risk assessment, (4) due diligence; (5) communication (including training) and (6) monitoring and review.

7.6. Furthermore, the Crown Prosecution Service and the Serious Fraud Office have provided Joint Guidance as to how they will apply the Code for Crown Prosecutors when deciding whether to prosecute offences under the Bribery Act 2010.

8. Diversity Implications

8.1. None

9. Background Papers

1. **Brent Council.** Anti Fraud Framework. *Brent Council*. [Online] 23 April 2012. [Cited: 2 January 2013.] [http://www.brent.gov.uk/stratp.nsf/Files/LBBA-251/\\$FILE/Anti_Fraud_Framework_2008.pdf](http://www.brent.gov.uk/stratp.nsf/Files/LBBA-251/$FILE/Anti_Fraud_Framework_2008.pdf).
2. **Attorney General.** *Fraud Review*. London : Home Office, 2006.
3. **Home Office.** Fighting Fraud Together. *Home Office*. [Online] 23 October 2012. [Cited: 2 January 2013.] <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/fighting-fraud-tog/fighting-fraud-together?view=Binary>.
4. **Local Government Oversight Board.** Fighting Fraud Locally. *Home Office*. [Online] 2 April 2011. [Cited: 2 January 2013.] <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/fighting-fraud-locally-strategy/strategy-document?view=Binary>.
5. **Audit Commission.** *Protecting the Public Purse*. London : Audit Commission, 2009.
6. —. *Protecting the Public Purse*. London : Audit Commission, 2012.
7. **Ministry of Justice.** *The Bribery Act 2010*. London : Ministry of Justice, 2010.

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